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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERTO CARDENAS ZARCO,

Defendant and Appellant.

F078126

(Super. Ct. No. F16901703)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Houry A. Sanderson, Judge.

Jason Szydluk, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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\* Before Smith, Acting P.J., Meehan, J. and DeSantos, J.

## **INTRODUCTION**

Appointed counsel for defendant Roberto Cardenas Zarco asks this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Zarco was advised of his right to file a supplemental brief and responded, challenging the sentence that was imposed and claiming he felt pressured to enter into the plea agreement. We affirm.

## **FACTUAL AND PROCEDURAL SUMMARY**

On May 15, 2018, a first amended information was filed against Zarco charging him with six counts of lewd acts on a child under the age of 14 years, in violation of Penal Code section 288, subdivision (a).<sup>1</sup> Two counts alleged acts against Jane Doe I and four counts alleged acts against Jane Doe II. It also was alleged that section 667.61, subdivision (e)(4) applied in that there were multiple victims.

On May 23, 2018, Zarco signed a felony advisement, waiver of rights, and plea form. He initialed each provision of the plea agreement. Zarco agreed to plead to counts 1, 2, and 3 in exchange for dismissal of the remaining three counts and the section 667.61 allegation. Another felony case, pending as case No. F16904707, also was to be dismissed. As part of the plea agreement, he stipulated to a 12-year term of imprisonment and to waive “time credits for all purposes.” The plea form states that the basis of the plea is the preliminary hearing transcripts.

Zarco signed the plea form under penalty of perjury, verifying that he had read and understood the form. Defense counsel also signed the form, verifying that he had reviewed the plea form with Zarco; answered Zarco’s questions about the plea; explained the consequences of the plea; and discussed the facts of the case and possible defenses with Zarco. The Spanish language interpreter also signed the form, verifying she had translated the form for Zarco and he understood the contents of the form.

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<sup>1</sup> All statutory references are to the Penal Code.

At the change of plea hearing on May 23, 2018, the trial court reviewed the form with Zarco and verified that Zarco had signed and understood the form. When asked by the trial court if he had any questions about the plea agreement, Zarco responded he did not. Zarco also stated affirmatively that he had sufficient time to review the plea agreement with defense counsel and the interpreter. The trial court advised Zarco of his constitutional rights and accepted a waiver of those rights.

The trial court also confirmed that Zarco understood his plea agreement called for a “12 year stipulated sentence” that could not be reduced or increased at sentencing. Zarco verified he understood this provision. In addition, the trial court confirmed that Zarco understood he was waiving credits and would receive “zero credits” at sentencing.

The trial court proceeded to accept no contest pleas from Zarco to counts 1, 2, and 3. The parties stipulated that the preliminary hearing transcripts provided a factual basis for the pleas.

At the August 21, 2018 sentencing hearing, the trial court again verified that Zarco was waiving accumulated credits for all purposes and would have “zero” credits at sentencing. Zarco confirmed that was part of the plea agreement. The trial court then proceeded to impose a total sentence of 12 years imprisonment and awarded no credits, in accordance with the plea agreement.

On September 19, 2018, Zarco filed a notice of appeal. The notice states that he is appealing from the “sentence or other matters ... that do not affect the validity of the plea.” No certificate of probable cause was requested or issued.

### **DISCUSSION**

Appellate counsel filed a *Wende* brief on May 30, 2019. That same day, this court issued its letter to Zarco inviting him to submit a supplemental brief. On June 25, 2019, Zarco submitted a supplemental brief in which he states, “they took away all my credit,”

they violated his rights because “the time they gave me for what they are accusing me of is a lot,” and “they told me that if I did not take this deal they were going to give me life.”

Zarco entered into a valid plea agreement. The plea agreement included a waiver of credits and a stipulated 12-year term of imprisonment. He was sentenced in accordance with the plea agreement. To challenge the propriety of his plea, Zarco was required to obtain a certificate of probable cause from the trial court. (§ 1237.5; Cal. Rules of Court, rule 31(d); see *People v. Panizzon* (1996) 13 Cal.4th 68, 75; *People v. Ribero* (1971) 4 Cal.3d 55, 63.) This he failed to do.

Regardless, the record establishes that Zarco initialed and signed a change of plea form indicating he understood the consequences of his plea; had sufficient time to discuss the consequences of the change of plea with his attorney; and verbally affirmed he understood the consequences of his change of plea when asked by the trial court. Zarco appears to be suffering from postplea apprehension or “buyer’s remorse,” which is not a valid basis for setting aside a plea agreement. (*People v. Knight* (1987) 194 Cal.App.3d 337, 344.)

Furthermore, the record does not disclose any undue pressure or duress. Zarco was under no more pressure than any other defendant faced with the option of a trial or accepting a plea agreement. Had the section 667.61, subdivision (e)(4) allegation been found true, Zarco was facing a “One Strike” sentence of 25 years to life because there were multiple victims. (§ 667.61, subds. (a) & (e)(4).) Feeling pressured to enter into a plea agreement does not constitute duress. (*People v. Huricks* (1995) 32 Cal.App.4th 1201, 1208.)

After an independent review of the record, we find no reasonable, arguable factual or legal issues exist.

### **DISPOSITION**

The judgment is affirmed.